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SUPREME COURT OF THE UNITED STATES.

No. 64.

WILLIAM H. WILLIAMS, PLAINTIFF IN ERROR.

vs.

JAMES ASH, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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S. D. Langtree, Print.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.
For the County of Washington.

JAMES ASH
vs
WILLIAM H. WILLIAMS. } Petition for Freedom.

Be it remembered, that on the first day of May, in the year of our Lord one thousand eight hundred and forty, judgment by the said court was rendered against the defendant in the above cause, as appears from the minutes and proceedings of said court.

Petition to the Honorable R. B. Taney.

Whereupon, the said defendant, by John Marbury, Esquire, his attorney, filed in the court here the following petition, which appears to have been addressed to the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, in the words and of the terms following, to wit:

To the Honorable the Chief Justice of the United States of America:

The petition of William H. Williams, of Washington city, in the District of Columbia, respectfully shews: That in the month of December last, he purchased of one Gerrard T. Greenfield, a negro man, named James Ash, with notice that the said Greenfield claimed the said negro under the will of Maria A. Greenfield, late of Prince George's county, Maryland, deceased, and that the said Maria had, by a proviso in her will, restricted the right of said Gerrard to any one, or to remove him from the State of Maryland, a restriction, which she in like manner imposed upon the said Gerrard as legatee of sixteen other negroes in her said will. Your petitioner was also informed that the said Gerrard had been advised that such restriction upon the right to dispose of the property given him by the said will, being repugnant to the nature of the estate given, was void, and that his object in selling the negro, James Ash, was to obtain a judicial decision on that question; the negro James was therefore informed of the sale, and an opportunity given him to commence a suit for his freedom. Your petitioner was fully indemnified in the event of a decision in favor of the freedom of the said negro.

Your petitioner further shews, that the said negro James did commence his said suit, and the same was tried at the term of the circuit court of the District of Columbia, for Washington county,

which closed its sitting on Friday, the 1st of this month, and the judgment of the said court in said cause being against your petitioner, he, feeling himself agrieved thereby, did pray an appeal, but in as much as the said negro is not of the value of one thousand dollars, your petitioner cannot have the benefit of his appeal without an order from one of the justices of the Supreme Court directing the same to be allowed.

Your petitioner therefore believing that there is error in the judgment of the said circuit court in the said cause, and that such error involves a question of law important to the slave States, and therefore of such extensive interest as to render a final decision of the same by the Supreme Court of the United States desirable, respectfully lays before your honor a copy of the proceedings complained of, and prays that the same may be considered, and that your honor would direct such order to the clerk of the said circuit court as will enable your petitioner to remove the said cause, by appeal, to the Supreme Court, and he will pray.

And your petitioner asks leave to suggest the following, as a sufficient cause why such order should be allowed:

That in the decision of the case of James Ash, the circuit court have held virtually, that the rule of law which would have been applied in the trial of the right to any other property was inapplicable to a case in which the right of a negro to freedom was involved, it having been conceeded on all hands, that if the bequest had related to other than negro property with a devise over in case of sale or removal, the devise over would have been void, as depending on a repugnant condition. Or if Maria A. Greenfield had, instead of giving freedom to the negroes, in the event of their being sold or removed, giving them, in such event, to some third person, that the devise over would have been void for the same reason.

In addition to which your petitioner may suggest, that the value of the property effected by the decision of James' case is very considerable, as appears by the clause of the will under which he claims his freedom. He further begs leave to refer to the case of Bradley *vs.* Peixoto, 3 Ves: 324.

JOHN MARBURY,
For the Petitioner.

May 5, 1840.

Upon the back of the aforegoing petition was the following endorsement, to wit:

To William Brent, clerk of the circuit court of the District of Columbia, for the county of Washington:

Order of Chief Justice directing same to issue.

You are hereby directed to issue the writ of error prayed for in the aforegoing petition, upon the terms and conditions prescribed by law.

District of Maryland, Baltimore, May 12, 1840.

R. B. TANEY,
Chief Justice of the Supreme Court of the United States.

Whereupon in virtue of the above order the writ of error issued as prayed, with a citation, directed to the said James Ash, and the said William H. Williams, having given bond as required by law, the following transcript of the record of proceedings in the said cause is accordingly transmitted to the Supreme Court of the United States.

UNITED STATES OF AMERICA, *sct.*

The President of the United States to the Judges of the Circuit Court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea, which is in the said court before you, between James Ash, petitioner, and William H. Williams, defendant, a manifest error has happened to the great damage of the said William H. Williams, as by his complaint appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid; in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same there on the second Monday of January next, in the said Supreme Court, then and there had and held, and that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and the custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court.

Signed this 14th May, 1840.

WM. BRENT, *Clerk.*

Citation.

DISTRICT OF COLUMBIA, *sct.*

The United States of America to James Ash, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January next pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein William H. Williams is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the William H. Williams should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness the honorable William Cranch, chief judge of the circuit court of the District of Columbia.

Signed this 14th of May, 1840.

WILLIAM CRANCH.

Know all men by these presents, that we, William H. Williams, Thomas Williams, and Alexander Lee, all of Washington county, in the District of Columbia, are held and firmly bound unto James Ash, in the just and full sum of five hundred dollars current money, to be paid to the said James Ash, his executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 14th day of May, in the year one thousand eight hundred and forty.

Whereas lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit depending in the said court, wherein the said James Ash was the petitioner, and the said William H. Williams was defendant, judgment was rendered against the said defendant, and he having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the jugdment in the aforesaid suit, and a citation to the said James Ash, to be and appear at a Supreme Court of the United States to be held on the second Monday of January next.

Now the condition of the above obligation is such, that if the said William H. Williams shall prosecute his said writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

WM. H. WILLIAMS, [L. S.]
THOS. WILLIAMS, [L. S.]
ALEXANDER LEE, [L. S.]

Signed, sealed, and delivered
in the presence of
BENJAMIN BURNS.

Copy, test:

W. BRENT, *Clerk*.

Approved.

W. CRANCH.

Style of Court.

DISTRICT OF COLUMBIA, *ss*.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the 24th day of the same month, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the sixty-fourth.

Present: William Cranch, chief judge; the honorable Buckner Thruston and James S. Morsell, associate judges; Alexander Hunter, Esq., marshal.

WILLIAM BRENT, *Clerk*.

Parties.

In the record of the proceedings of the said court, among others, are the following, to wit:

JAMES ASH
vs.
WILLLIAM H. WILLIAMS.

Be it remembered, that heretofore, to wit, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the said James Ash, by Joseph H. Bradley, Esq., his attorney, filed in court here, the following petition, to wit:

Petition.

The petition of James Ash to the honorable the judges of the circuit court of the District of Columbia, for the county of Washington, humbly sheweth, that the said James Ash is entitled to his freedom, and he hath filed his petition in the Prince George's county court and State of Maryland; that the said petition is still pending in the said county of Prince George; that a certain John Grimes hath arrested your petitioner and now holds him in custody, and hath confined him in the private jail of William H. Williams, of the city of Washington.

Your petitioner prays that subpœna may be issued for the said William H. Williams, and that your petitioner may have a fair trial of his said petition in your honorable court.

JOSEPH H. BRADLEY,
For Petitioner.

Defendant's Appearance and Plea of not Free, and Issue joined. Venire Facias.

Whereupon subpœna issued as prayed, and the said William H. Williams, by John Marbury, Esq., *by John Marbury, Esq.*, his attorney, comes into court here, and defends the complaint aforesaid, when and where the said court shall take the same into consideration, and for plea he says that the said petitioner is not entitled to his freedom as is alleged, and of this he puts himself upon the country; and the said petitioner in like manner and so forth; therefore let a jury thereon appear before the court here immediately by them, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., who being called, come, to wit:

Jury-Verdict.

1. William N. Waters,
2. Samuel Philip,
3. Hy. H. McPherson,
4. Geo. W. Philips,
5. W. C. Orme,
6. Joseph B. Ford,
7. William Clarke,
8. Thomas Owens,
9. John Purdy,
10. John W. Ferguson,
11. A. W. Turner,
12. Joseph H. Daniels,

Who being duly elected, empannelled and sworn to say the truth in the premises, upon their oath do say, that the said petitioner is entitled to his freedom, as he above alledges.

Judgment on Verdict.

Therefore it is considered by the court here, that the said James Ash, the petitioner aforesaid be free and discharged of and from the service of the said William H. Williams, and that said petitioner go thereof without day. It is further considered by the court here, that the said petitioner recover against the said William H. Williams the sum of dollars and cents his costs and charges by him about his petition in that behalf laid out and expended, &c.

Memorandum.

Memorandum. Before the jurors aforesaid withdrew from the bar of the court here the said William H. Williams by his attorney aforesaid filed in court here, the following bill of exceptions, to wit:

Defendant's Bill of Exceptions.

Defendant's Bill of Exceptions.

Upon the trial of this cause, the petitioner by his counsel, to support the issue on his part joined, produced and gave in evidence to the jury, the last will and testament of Maria Ann T. Greenfield, hereto annexed; and it was admitted that the said testatrix, died at the county of Prince George's in the State of Maryland, soon after the date of said will in the year 1824; that upon her death Gerad T. Greenfield, the executor named in said will duly proved the same in the orphans' court of said county, where the slaves and property left by the testatrix were, and took letters testamentory as such executor; that the said G. T. Greenfield is the same person mentioned and described in the said will, to whom several portions of the slaves of said testatrix, under various limitations and the residue of the estate, are devised.

That the petitioner is one of the slaves named and ~~demised~~ devised in that clause of the said will, which is in the words following, to wit:

Extract from the Will.

"I also give and bequeath to my nephew Gerad T. Greenfield all my negro slaves, namely: Ben, Mason, Henry, George, Lewis, Rebecca, Kitty, Sophia, Mary, Elizabeth, Nathaniel and Maria; also Tony, Billy, Betty and Anne, provided he shall not carry them out of the State of Maryland, or sell them to any one; in either of which events, I will and desire the said negroes to be free for life."

That the petitioner was a slave born and the property of said testatrix at the time of her death, that the said G. T. Greenfield, upon the death of said testatrix, took possession of the petitioner and the other slaves devised to him in said will, and held the same as his slaves so devised to him, from that time till the 18th day of December last, when, before the institution of this suit he sold the petitioner to the defendant: that the said G. T. Greenfield at the time of the date of said will, and ever since resided in the State of Tennessee, with an interval of between two and three years, that he sojourned after the death of the testatrix, in Prince George's county aforesaid for the purpose of settling his business: thereupon the court was of opinion and instructed the jury, that by the fact of such sale of the petitioner the estate or property in the petitioner so devised to said G. T. Greenfield ceased and determined; and the petitioner thereupon became entitled to freedom as claimed in his said petition: to which opinion and instruction of the court, the defendant by his counsel excepted, &c., and this his bill of exceptions is sealed, &c., this 1st day of May 1840.

W. CRANCH. [L. S.]
B. THRUSTON. [L. S.]

Test: W. BRENT, *Clerk*.

DISTRICT OF COLUMBIA,
Washington County, to wit:

I, William Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that the aforegoing is a full, true and perfect transcript of all the proceedings had in the said court in the said cause, as appeareth of record.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 22d day of May 1840.

[L. S.]

W. BRENT, *Clerk*.